STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of an Alleged Public Road.

STATE OF MICHIGAN,

Petitioner-Appellant,

v

IRON COUNTY BOARD OF ROAD COMMISSIONERS, WEST IRON COUNTY SCHOOL DISTRICT, and BENEFIT LANDS CORPORATION,

Respondents-Appellees,

and

DEPARTMENT OF TRANSPORTATION,

Respondent.

UNPUBLISHED
March 20, 2007

No. 270663
Iron Circuit Court
LC No. 05-003234-CZ

Before: Hoekstra, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Petitioner State of Michigan appeals by right from the circuit court's order granting partial relief to petitioner in this declaratory judgment action involving an alleged public road. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The road or trail in question lies on approximately 53 acres currently owned by respondent West Iron County School District (WICSD). The WICSD's predecessor acquired the land in 1949 from the Department of Conservation subject to the following retained interest in the property:

> AND WHEREAS, it is expressly understood that the land herein described shall be used solely for Forestry purposes, and, when same ceases to be used for such purposes, it shall revert to the State of Michigan.

In 2003, respondent Benefit Lands Corporation (BLC) brought a quiet title action in the Iron Circuit Court seeking to assert an easement over the road. Apparently, BLC raised claims of adverse possession, easement by prescription, and easement by necessity. *Benefit Lands Corp v*

West Iron Co School Dist v State of Michigan Dep't of Natural Resources, LC No. 03-002434-CH.[1] The WICSD subsequently filed a third-party complaint against the Department of Natural Resources (DNR)[2] seeking to quiet title in the property and extinguish the DNR's reverter. The WICSD also moved for summary disposition. The Iron Circuit Court entered an interlocutory order stating that the WICSD's motion was "GRANTED on Plaintiff's claims concerning adverse possession of a public roadway" and denied the motion concerning BLC's claims of easement by prescription and easement by necessity. The DNR stipulated to entry of the order.

Although the Iron Circuit Court did not specifically decide whether the road was a public road, BLC allegedly recorded the Iron Circuit Court's order and related pleadings with the Iron County Register of Deeds, and claimed that the road was a public road.[3] During later proceedings concerning BLC's motion to dismiss the remainder of its claims and the WICSD's decision to withdraw its earlier motion to quiet title, petitioner conditionally objected to the dismissal. When the trial court questioned petitioner's interest given its position only as a defendant, petitioner moved to intervene. The trial court denied the motion to intervene as "untimely," and further refused to clarify its earlier order or to decide the legal effect on the title from the recording of the previous order. However, the trial court indicated that it would consider petitioner's position on the public road issue if petitioner initiated a new action. The trial court granted the remaining motions to dismiss and withdraw. Petitioner did not appeal this decision.

Petitioner subsequently filed a petition for declaratory judgment in Ingham Circuit Court, and filed a motion for summary disposition. Venue was subsequently transferred to Iron County.

During a hearing on petitioner's motion for summary disposition, the trial court granted petitioner most of the relief it sought. When the trial court questioned petitioner as to what interest it had in the parcel, petitioner replied that it had an interest in not having to exercise jurisdiction over the trail or to be responsible for its maintenance. The trial court indicated it would issue an order to this effect declaring that petitioner had no jurisdiction over the road and no duty to maintain it. The trial court then held that the Iron County Road Commission (ICRC) had no jurisdiction over the road, and would not be required to maintain it. However, when petitioner requested that the trial court decide that the road was not a public road, the trial court refused to do so, stating that petitioner did not have standing to ask for that remedy because petitioner did not presently own the property.

We review de novo a motion for summary disposition under MCR 2.116(C)(10), which tests the factual support of a claim. *Oade v Jackson Nat'l Life Ins* Co, 465 Mich 244, 250-251;

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[1] The complaint, answer, and motions for summary disposition in this earlier action have not been provided to this Court.

[2] The Department of Conservation is a predecessor to the Department of Natural Resources.

[3] Petitioner's initial motion for summary disposition contended that the order was recorded in the Iron County Register of Deeds, beginning at Liber 396, Page 525. However, petitioner has not furnished any documentation showing that the order was actually recorded.

632 NW2d 126 (2001); *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). We also review de novo both a trial court's decision on a request for declaratory relief, *Lake Angelus v Oakland Co Rd Comm*, 194 Mich App 220, 223; 486 NW2d 64 (1992), and a trial court's decision on the issue of standing. *Nat'l Wildlife Fed v Cleveland Cliffs Iron Co*, 471 Mich 608, 612; 684 NW2d 800 (2004).

Petitioner first argues that the trial court erred by refusing to grant it all of the declaratory relief it sought. Petitioner maintains that, pursuant to MCR 2.116(G)(4), the trial court was required to find in its favor. We disagree.

When seeking summary disposition under MCR 2.116(C)(10), the moving party must specifically identify the matters which have no disputed factual issues, *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999), and has the initial burden of supporting his position by affidavits, depositions, admissions, or other documentary evidence, *Smith*, *supra* at 455. The party opposing the motion then has the burden of showing by evidentiary materials that a genuine issue of disputed fact exists. *Id*. If the evidence submitted demonstrates that there is no genuine issue of material fact for trial, summary disposition of the matter is appropriate. *Spiek v Dep't of Transportation*, 456 Mich 331, 337-338; 572 NW2d 201 (1998)*;* MCR 2.116(G)(4).

In this case, the trial court did not decide the issue raised on appeal under MCR 2.116(C)(10). The trial court effectively granted partial summary disposition for petitioner by holding that the State did not have jurisdiction over the road or an obligation to maintain it. However, the trial court did not reach the substantive issue of whether the road was a public road, but instead, found that petitioner did not have standing to raise the issue. We have held that the issue of standing may be raised by a trial court sua sponte. *46th Circuit Trial Court v Crawford Co*, 266 Mich App 150, 177-178; 702 NW2d 588 (2005), rev'd on other grounds 476 Mich 131, amended 476 Mich 1201 (2006), citing *Kaiser v Schreiber*, 258 Mich App 357, 369-371; 670 NW2d 697 (2003), rev'd on other grounds 469 Mich 944 (2003); *LME v ARS*, 261 Mich App 273, 287; 680 NW2d 902 (2004); MCR 2.116(D)(3). Petitioner cannot show that it is entitled to relief due to the trial court's failure to grant it summary disposition pursuant to MCR 2.116(G)(4).

Petitioner next argues that the trial court erred by finding that it lacked standing to seek a declaration that the trail was not a public road. We disagree.

To establish standing, petitioner must show that it has suffered an interest that will be detrimentally affected in a manner different from the public. In *Lee v Macomb County Bd of Comm'rs*, 464 Mich 726, 739-740; 629 NW2d 900 (2001), our Supreme Court adopted the following requirements as a test for whether a party has standing:

> First, the plaintiff must have suffered an "injury in fact"--an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of--the injury has to be "fairly . . . traceable to the challenged action of the defendant, and not . . . the result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." [*Lee*, *supra* at 739 quoting *Lujan v*

Defenders of Wildlife, 504 US 555, 560-561; 112 S Ct 2130; 119 L Ed 2d 351 (1992) (citations omitted).]

Here, when questioned about the extent of petitioner's interest in the road given the trial court's decision that petitioner had no responsibility to maintain it and no jurisdiction over it, petitioner's attorney replied that, "Their interest is not having any liability, any duty to maintain, or any tort liability in exception to governmental immunity if this is declared a public road and someone is, for example, hurt on it." Petitioner reiterates these arguments on appeal.

As among the parties to this litigation, the trial court's order granted petitioner the relief it sought, especially as no party was attempting to force petitioner to take responsibility for the road. Petitioner cannot show that it would suffer an injury in fact if the trial court did not grant it further declaratory relief.

As to the prospect of future litigation, we do not find petitioner's argument convincing. Contrary to petitioner's position at trial and on appeal, the trial court has never declared the road to be a public road. The complained of order from the prior case merely dismissed the BLC's adverse possession of a public road *claim*; it did not declare the road to be a public road. The trial court repeatedly clarified that the previous order was not intended to declare the road a public road. The trial court's grant of summary disposition in this case did not itself invade any interest of petitioner, but rather provided protection for petitioner against the other parties. Whether any future litigant could rely on the previous order to plead in avoidance of immunity is doubtful, but in any event, such a prospect is neither "actual" nor "imminent" here. Even if petitioner were able to show an invasion of a legally protected interest, that of maintaining governmental immunity for injuries that occur on the road, this invasion would be triggered only when a future party files a lawsuit against petitioner for an injury and tries to plead in avoidance of governmental immunity. The possibility of such litigation is entirely speculative.

Moreover, even if the trial court had granted petitioner the requested relief, we question whether such an order would bar a future non-party litigant from arguing that the road is public due to the lack of privity. See *Monat v State Farm Ins Co*, 469 Mich 679, 683-685; 677 NW2d 843 (2004); *Baraga Co v State Tax Comm*, 466 Mich 264, 269; 645 NW2d 13 (2002); *Sewell v Clean Cut Mgmt, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001). Therefore, under *Lee*, *supra*, we find that the trial court did not err in deciding that petitioner failed to establish standing for further declaratory relief due to any perceived obligation to repair the road or to be responsible for injuries that occurred on the road.[4]

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[4] We note that the trial court's decision does not preclude petitioner, as a future interest holder, from pursuing subsequent proceedings, such as a quiet title action, to raise this issue, to remove the challenged order from the chain of title, or to obtain other appropriate relief with respect to BLC's easement or use of the road. See *Ditmore v Michalik*, 244 Mich App 569, 580; 625 NW2d 462 (2001); MCL 600.2932. However, as noted above, petitioner did not seek standing as a future interest holder, or ask to amend its petition, even when specifically prompted to do so by the trial court. Nor does petitioner argue on appeal that it had standing pursuant to MCL 600.2932. Under the circumstances, then, we decline to address this issue at this time. *Alford v*

(continued…)

In light of the fact that petitioner has not established standing to pursue further relief, we need not reach the issue of whether the trial court erred when it refused to consider the substantive merits of petitioner's claim.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jane E. Markey
/s/ Kurtis T. Wilder

(…continued)

Pollution Control Indus, 222 Mich App 693, 699; 565 NW2d 9 (1997).